

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PAUL R. MESSERSCHMIDT,

Defendant.

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8:09CR357

TENTATIVE FINDINGS

The Court has received the Modified Presentence Investigation Report ("PSR"). The government has adopted the PSR ([Filing No. 26](#)). The Defendant did not file objections to the PSR as required by the ¶ 6 of the Order on Sentencing Schedule ([Filing No. 23](#)). According to the Addendum to the PSR, objections were initially submitted to the probation officer under ¶ ¶ 30, 47 and 68 of the PSR. The court has also reviewed the Defendant's Sentencing Memorandum ([Filing No. 27](#)). The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to [United States v. Booker, 543 U.S. 220 \(2005\)](#), the sentencing guidelines are advisory.

¶ 30 - Other offenses (*Identity of vehicle with explosives*):

The objection is denied for the reason stated in the Addendum to the PSR.

¶ 47 - Civil Judgment Record Search:

The Court is not at liberty to change the records cited in the PSR but will credit the defendant's version of such records.

¶ 68 - Restitution:

The objection is denied. The turkey was taken in violation of regulation as set forth in Count III of the Information. The amount of restitution is governed by the Collateral Forfeiture Schedule for the District of Nebraska.

ADMONITION

If the parties require more or less than a half hour for sentencing, the following must occur: counsel must immediately comply with § 851 and ¶ 8 of the Order on Sentencing Schedule; and following counsel's adequate compliance with § 851 and ¶ 8 of the Order on Sentencing Schedule counsel must immediately contact Mary Beth McFarland by e-mail, McFarland@ned.uscourts.gov, and schedule the required time for the sentencing hearing.

IT IS SO ORDERED.

IT IS FURTHER ORDERED:

1. Except as set forth above, the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;

2. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings that adheres to the requirements of ¶ 8 of the Order on Sentencing Schedule, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

3. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 29th day of June, 2010.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge